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neither positively swear to, nor allege sufficient facts and circumstances in the affidavit to satisfy the judge of its existence." Equally safe, it seems to me, would be the rule, that an officer of this court should not be detained in prison for an alleged abuse of his powers, without either a positive oath of merits from the plaintiff, or a sworn detail of circumstances to supply its place.

Relators discharged.

In the District Court of the United States for the Wisconsin District, November Term, 1854.

CHARLES A. AVERY AND MOSES K. MOODY vs. EDGAR P. DOANE.

1. A married woman living with her husband, having carried on business of trade in her own name, and purchased goods upon credit, and also having a running account for goods purchased of her husband, cannot be proceeded against as garnishee in an attachment against her husband.
2. The act of Wisconsin to provide for the protection of married women in the enjoyment of their own property, does not enable a married woman, while living with her husband, to carry on trade to the exclusion of him or his creditors, or to become his debtor in the business of the trade.

The opinion of the Court was delivered by

MILLER, J.—This proceeding was commenced by writ of attachment, which was served on Sarah A. Doane, as garnishee. Her answer was taken before a commissioner of this court; wherein she states, that she is the wife of the defendant, Edgar P. Doane, and has been for eighteen years, and that she resides with her husband, at Green Bay; where she is, and has been engaged in the dry goods, millinery and fancy goods business, for four years. That she carries on the business, and buys goods in New York and Chicago, in her own name, principally on credit. She also bought goods on credit out of her husband's store, before he sold out and stopped business. She had a running account with her husband. When she commenced business at Green Bay, her father purchased part of the goods, amounting to four or five hundred dollars; and gave her some money as a present. Her business has always been in her

own hands; and she now gives her husband his board for his assistance and services.

The plaintiff's counsel not being satisfied with the answer of Sarah A. Doane, of which the foregoing is in substance a part, moved the court to order an issue, to try her liability as garnishee, under the statute; which motion is opposed by her counsel, upon the ground, that being the wife of the defendant in the attachment suit, she is not answerable in this proceeding, under the circumstances disclosed in her answer.

There is no law in this State recognizing the custom of London, whereby married women may carry on the business of trade and merchandise as *femmes sole*, while cohabiting with their husbands. In some States *femmes covert* may carry on business as *femmes sole*, in pursuance of statutes, while their husbands are engaged as mariners and absent from the country. This is the extent of legislation upon this subject, in any of the States, within my knowledge.

It is unnecessary to refer to authorities to prove, that, at common law, the husband is entitled to the goods and chattels of the wife, and also to all sums of money which she earns by her own skill and labor; and that these he has absolutely in his own right and not in hers. And if she purchases goods or property, during coverture, with his assent, and with the proceeds of her labor and saving, they become his at the moment of the purchase, and he becomes responsible for such as may be purchased upon credit.

It is contended that the act to provide for the protection of married women in the enjoyment of their own property, approved February 1, 1850, chap. 44, changes the common law upon this subject. The third section of the act is as follows: "Any married female may receive, by inheritance or by gift, grant, devise or bequest, from any person other than her husband, and hold to her own and separate use, and convey and devise, real and personal property, and any interest or estate therein, and the rents, issues and profits, in the same manner and with like effect as if she were unmarried, and the same shall not be subject to the disposal of her husband nor be liable for his debts." The act provides more effectually for the protection of the wife's property, by dispensing with the neces-

sary intervention of trustees, than Courts of Equity had done; but it does not authorize the wife to hold to her own use, to the exclusion of her husband or his creditors, a store of goods purchased by her upon credit, or the profits or proceeds of trade. By the act, she might have held, to their exclusion, the money given her by her father, but nothing more. That was property given her by a person other than her husband, which she, by the act, could receive, and not be subject to the disposal of her husband nor liable for his debts. The goods now in the store, and the notes, accounts, and cash in hand she did not receive by inheritance, gift, grant, devise, or bequest, from any person other than her husband, or in any way known to this act.

The act changes materially the legal incidents of the marriage relation, but it has not extinguished quite all of the marital rights of the husband. He is still entitled to the person and labor of his wife, and to the benefits of her industry and economy. The wife, by the act, is not degraded to the condition of a hireling, which she would be if it authorized her to withhold from her husband the proceeds of her own labor; nor is she vested with authority over him, or of independence of him, in her business transactions of trade, even if he, as in this instance, after disposing of his goods without paying his debts, should consent to become her servant for his board. The defendant, by voluntarily surrendering to his wife his marital authority in the control and direction of the business of his family, cannot compromise the legal rights of his creditors. He may consent to serve his wife in the store for his board, but the law entitles him and his creditors to the goods and the proceeds of sales. The persons from whom she purchased goods upon credit, with her husband's consent, cannot bring suit against her, but must resort to him for the recovery of their demands, although the charges in their books may be to her, or the notes be signed by her alone. As she cannot contract in business of trade in her own name while living with her husband, she cannot sue or be sued in her own name upon transactions connected with the trade, nor be summoned as his garnishee. She can no more be his debtor, in this particular, than she can hold the goods in store or the avails of sales, to the exclu-

sion of him or his creditor. The common law has wisely ordered that property acquired by the wife by purchase, with the consent of her husband, is in his possession and under his control, and the act under consideration does not disturb this provision, so essential to the peace and happiness of families.

The act of this State is copied from that of the State of New York; where a similar decision was made in *Lovett vs. Robinson and Witbeck*, 7 Howard's Prac. Rep. 105. And a similar decision of the Supreme Court of Pennsylvania, upon a similar law, is reported in *Raybold vs. Raybold*, 8 Harris' Rep. 308. In that case it is decided that, the fact that real estate was paid for with the wife's earnings and savings, does not give her a trust estate in the property; but that money thus acquired is not the property of the wife, within the meaning of the act, relating to the estate of married women, but is the property of her husband.

For these reasons the proceeding against Sarah A. Doane, is dismissed, and the application for an issue is overruled.

*In the District Court of the United States for the Maryland
District, January, 1855.*

CHARLES REEDER, JR. vs. THE STEAMSHIP GEORGE'S CREEK.

1. Construction of the act of 29th July, 1850, relating to conveyance of vessels.
2. A recorded mortgage of a vessel does not take priority over a subsequent lien, obtained by a material man, for necessary supplies or repairs.

Libel *in rem* by a material man, for repairs to the ship.

The opinion of the Court was delivered by

GILES, J.—This case has been argued and submitted to the Court upon the following statement of facts:

The steamer "George's Creek" belongs to the port of New York, and on the 24th December, 1853, she was mortgaged by her owners